



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER

33 HAZEN DR. CONCORD, NH 03305

603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

## DECISION & ORDER

In the Matter of:

### Trout Pond, Freedom, New Hampshire

#### HISTORY:

I take Official Notice of the following:

- The Department of Safety received a petition requesting that any boat equipped with a petroleum-powered motor be banned from Trout Pond in Freedom, New Hampshire.
- The petition, dated May 14, 2012, was submitted by the Town of Freedom Board of Selectmen, included fifty-two (52) names of co-petitioners.
- Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules, Saf-C 409, a public hearing was held on Friday, June 22 at 1:00 p.m. at the Freedom Town Hall, 16 Elm Street, Freedom, New Hampshire. C. N. Duclos, Hearings Examiner, conducted the hearing on my behalf.
- The petition submitted by the Town of Freedom Selectmen requested a hearing pursuant to RSA 270:12 to address concerns, providing specific reasons and attaching a list of co-petitioners.

## **OPENING REMARKS:**

Everyone present was informed of the following:

- the Notice of Hearing was read to the persons in attendance;
- the Petition and all supporting documents will be available for review;
- the public hearing is recorded;
- the recording will be preserved for seventy-five (75) days along with an explanation of the procedure by which to receive a copy of the recording;
- their opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- notification of the public hearing was published in The Union Leader on May 31, 2012, which is a newspaper of statewide circulation with a clipping from the newspaper being displayed;
- they could review the legal notice clipping from the newspaper, along with the original petition and any other documents; and,
- how and where to submit written comment that must be received by the Department of Safety within ten (10) calendar days following the hearing.

## **STATISTICS:**

Four (4) people signed to speak in favor of the petition and one (1) person did not speak, but was present and recorded himself in favor of the petition. No one spoke against the petition and no one recorded himself or herself as being against the petition. The legal notice was published in the May 31, 2012 edition of the Union Leader.

## **EXHIBITS:**

**Exhibit # 1** A letter dated June 5, 2007 from Robert H. Estabrook, Chief Aquatic Biologist, New Hampshire, Department of Environmental Services

**Exhibit # 2** A letter dated May 12, 2012 from Conservation Officer Alex Lopashanski, New Hampshire, Fish and Game Department

## **SYNOPSIS OF TESTIMONY:**

**Mr. Robert M. Hatch** is on the Freedom Town Conservation Commission and is Chairman of the Forest Advisory Board for the town forest. He testified that Trout Pond is accessible to the public and the board is predominantly concerned about environmental issues such as pollution on the pond. Having this Petition in place will protect the pond. Mr. Hatch presented two exhibits reading portions of them into the record. The first letter (Ex. #1) provided information regarding a statistical survey by the US Environmental Protection Agency of the of the nations lakes. Trout Pond was among the nine hundred (900) chosen to collect water and sediment samples. Mr. Estebrook remarked: "...Trout Pond is probably one of the most pristine (minimally impacted from anthropogenic sources) ponds in the state." The second letter, (Ex. #1) authored by Conservation Officer Lopashanski, discusses the Freedom Conservation Committee's progress in relation to improving the access road allowing easier access by the public. In his opinion, a gas-powered motors are not necessary and supports the Town of Freedom's Petition. Mr. Hatch testified that the petitioners would like to keep the pond's undeveloped and pristine nature.

**Mr. Charles G. Depew** is a member of the Forest Advisory Committee. He testified the committee decided to attract a pair of loons to the pond and provided the steps taken to build an artificial island to do so. The Loon Preservation Committee supported the effort to do so. Mr. Depew said the committee supports repairing and upgrading the road to allow Fish and Game accessibility for stocking the pond. Stocking will provide food for the loons and attract more loons to the pond.

**Mr. James B. McElroy** testified that he also is on the Conservation Committee and serves on the evasive species subcommittee. He testified that within other bodies of water located within Freedom there is a serious problem with milfoil. Trout Pond presently has no infestation. Their concern is the spreading of the evasive plant is, in part, due to more boat access increasing the threat. Small electric motors will reduce the risk.

**Mr. Barry Keith** is the Town Forester. He testified that he has evaluated Trout Pond for years and said that the pond and its watershed is located completely within the town's forest, which is completely owned by the Town of Freedom. He said the pond is the jewel of the forest. The town has an easement with the State of New Hampshire to protect the forest in the long-term. He concurs with those continuing to improve the area to allow more people to come to the area, yet there is more potential for problems if gas-powered motorboats get access to this 'gem of the forest'.

## **SYNOPSIS OF LETTERS RECEIVED:**

None

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### **DISCUSSION:**

In gathering findings of fact, the following is given consideration:

#### **270:1 Declaration of Policy.**

- I. In the interest of public safety and the protection of property, it shall be the duty of the commissioner of safety, in all cases not provided for by the United States inspection laws and in all cases in which inspections are not regularly made thereunder, to provide for the inspection on any public waters of the state of all commercial and private boats and the machinery, appliances, and equipment thereof, such inspections to be performed by said commissioner of safety or his duly authorized representative. Said commissioner of safety shall also supervise the safety of navigation and the establishment of aids to navigation, and all lights and buoys maintained at public expense on the inland waters of the state shall be under the jurisdiction of said commissioner of safety. Said commissioner of safety shall make such alterations and improvements in existing lights and buoys as may be desirable, place additional lights and buoys where required to promote the safety of navigation, remove obstructions tending to impede navigation, and maintain all lights and buoys under its jurisdiction.
- II. In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry, and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefit of all users, may diminish the value to be derived from them, it is hereby declared that the public waters of New Hampshire shall be maintained and regulated in such way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances. Such provisions shall take into consideration the following: the variety of special uses appropriate to our lakes, public safety, protection of environment, and water quality, and the continued nurture of New Hampshire's threatened and endangered species.

#### **RSA 270:12. Operating Restrictions.**

- I. The commissioner of safety shall, after receiving a petition signed by 25 or more residents or property owners of each affected town or towns in which a lake, Lake or river is located and after notice and hearing, at which it appears that the public interest requires, adopt rules under RSA 541-A governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75-109. (emphasis added) Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August and September following the date of the petition.

It is the duty of the commissioner to maintain safety on public waters. The law is explicit requiring no protracted analysis by this fact-finder. Also considered is RSA 270:12 with emphasis upon the language specifying the review by the legislature for bodies of water with thirty-five acres or less. (*supra*)

#### **Saf-C 409.04 Criteria for Review.**

- (a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that the public interest requires such action.
- (b) In determining whether to adopt such rules the commissioner may consider the following:
  - (1) The size of the body of water or portion thereof for which rulemaking action is being considered;
  - (2) The effect which adopting or not adopting the rule(s) would have upon:
    - a. Public safety;
    - b. The maintenance of residential, recreational, and scenic values;
    - c. The variety of uses of such body of water or portion thereof;
    - d. The environment and water quality; and
    - e. Threatened and endangered species.
  - (3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and
  - (4) The availability and practicality of enforcement of the rule(s).

The variety and maintenance of residential, recreational and scenic values are considered. There are a described variety of uses within Trout Pond. Water quality was generally discussed as was testimony on threatened and endangered species.

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings; however, greater significance is given to the specific laws that govern this review and the applications the petition seeks to have considered. Noted during the public comment was that the pond is within the Freedom Town Forest.

The letters read or referred to and testimony received collectively provided the fact-finder information in reference to the size and configuration of the area being considered and is given greater weight. The approximate size of the proposed area encompasses the entire pond.

Appropriate weight has been given to the area under discussion in accordance with the criteria of evaluating this petition found within the scope of authority as listed within this dissertation. It included documents and testimony received during a period of public comment. The information submitted was thoroughly considered within the petition, along with the public commentary received.

## **FINDINGS OF FACT:**

1. That pursuant to RSA 270:12 and Administrative Rule Saf-C 409.01, The Town of Freedom Board of Selectmen and twenty-five (25) or more people petitioned the Commissioner of the Department of Safety to conduct a public hearing to regulate motor boat usage in Trout Pond, Freedom, New Hampshire and establish a ban on the use of vessels powered by petroleum and any petroleum by-products.
2. Official notice for the hearing was published in a newspaper of statewide publication, The Union Leader, Manchester, New Hampshire, on May 31, 2012.
3. A public hearing was scheduled for Friday, June 22, 2012 on the issue and was conducted pursuant to RSA 541, RSA 270:12 and Administrative Rule, Saf-C 409 at the Freedom Town Hall, 16 Elm Street, Freedom, New Hampshire.
4. The petition requests that a ban be issued that there be no use of any petroleum-powered boats on Trout Pond in Freedom, New Hampshire.
5. The approximate size of Trout Pond is described as about twenty-one (21) acres. It is located within the approximately two thousand seven hundred (2,700) acre Freedom Town Forest. This pond is stocked annually with brook trout by the Department of Fish and Game. Trout Pond is accessible by Jackman Ridge Road, maintained by the town.
6. Trout Pond and the surrounding forest is managed for fish and wildlife resources consistent with the Forest Stewardship Plan and Conservation Easement held by the State of New Hampshire Department of Resources and Economic Development.
7. The petition is focused primarily on concerns for milfoil, other evasive plants and water quality in relation to the size of the pond. Further, the petitioners spoke to the primary and ongoing use of non-gasoline-powered vessels. The petitioners share concerns for water quality and the wildlife habitat from the effect of petroleum-powered vessels.
8. The effect which adopting or not adopting the petition would have upon the public safety is considered. Testimony has not been received referencing the maintenance of residential

values on the shoreline as there are no structures on the pond. The road leading to the pond is accessible by vehicle traveling a distance of about two (2) miles. Testimony in reference to recreational and scenic values was received encompassing the annual stocking of fish for anglers and as food for wildlife.


9. Testimony was received referencing the variety of uses of the waters within Trout Pond. General testimony was presented on water quality, environment and threatened and endangered species.
10. The public's use of the water within Trout Pond for all boaters and all persons lawfully enjoying this public body of water will benefit from establishing a ban on all vessels using petroleum-based motors in accordance with RSA 270:12,I.
11. The Department of Safety, Division of State Police, Marine Patrol Unit enforces the statute and rules governing Trout Pond and navigational laws are enforced through that agency.

#### **CONCLUSION OF LAW:**

The information submitted was thoroughly considered within the petition, along with the public commentary received. The evidence demonstrates that the petition is in the public interest fulfilling the purpose of law. In addition, the findings are of sufficient proof to show cause that a ban on the use of motorized vessels using petroleum based power shall be established pursuant to RSA 270:12 and Saf-C 409 (*et seq.*).

#### **DISPOSITION:**

The Petition for a ban on the use of motorized vessels using petroleum based power in Trout Pond is ordered. Rulemaking shall commence forthwith.

  
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John J. Barthelmes  
Commissioner of Safety


**RSA 541:3 Motion for Rehearing.**

"Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion."

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I certify that a copy of the order has been forwarded to the below named via first-class mail or electronic mailing (as applicable).

**Date of mailing:** 7/10/12

  
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Christopher Casco, Esq.,  
Administrator, Bureau of Hearings  
Department of Safety

A copy of this order was sent to the following:

Petitioner's Designee ~  
(To be distributed to Petitioners)

Colonel Robert L. Quinn  
Director of State Police

Town Administrator  
Freedom, New Hampshire

Christopher Casco, Esq.  
Administrator  
Bureau of Hearings

File

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[A copy was sent to those submitting an E-mail address and specifically requesting an Adobe Emailed copy of the Order.]